

ENTERED

January 24, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

CURTIS WAYNE ALLBRIGHT

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VS.

MISCELLANEOUS NO. 7:18-MC-1529

LORIE DAVIS, Director, Texas
Department of Criminal Justice,
Correctional Institutions Division

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Petitioner Curtis Wayne Allbright's petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, which had been referred to the Magistrate Court for a report and recommendation. On December 14, 2018, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's § 2254 petition be **DISMISSED** without prejudice for failure to exhaust, a Certificate of Appealability be **DENIED**, and Petitioner's application to proceed *in forma pauperis* be **DENIED** as moot. The time for filing objections has passed, and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.¹ Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, it is hereby **ORDERED** that Petitioner's § 2254 petition is **DISMISSED** without prejudice, a Certificate of Appealability is **DENIED**, and Petitioner's application to proceed *in forma pauperis* is **DENIED** as moot.

¹ As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.' " *Douglas v. United States Service Auto. Ass'n*, 79 F.3d 145, 1420 (5th Cir. 1996) (quoting Fed. R. Civ. P. 72(b) advisory committee's note (1983)) *superseded by statute on other grounds by* 28 U.S.C. § 636(b)(1), *as stated in ACS Recovery Servs., Inc. v. Griffin*, No. 11-40446, 2012 WL 1071216, at *7 n. 5 (5th Cir. April 2, 2012).

SO ORDERED this 24th day of January, 2019, at McAllen, Texas.

A handwritten signature in black ink that reads "Randy Crane". The signature is written in a cursive, slightly stylized font. The "R" is large and loops around the "a", and the "C" is also large and loops around the "r". The "e" is written with a simple horizontal stroke.

Randy Crane
United States District Judge